

APPEAL NO. 032603
FILED NOVEMBER 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on August 28, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the first, second, third, fourth, and fifth quarters, and that the respondent (carrier) is relieved of liability for the third and fourth quarters because of the claimant's failure to timely file an Application for [SIBs] (TWCC-52) for those quarters. The claimant appeals, contending that he was working during the relevant qualifying periods. The carrier urges affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). With regard to the claimant's evidence submitted at the CCH that he was working part-time during the relevant qualifying periods, the hearing officer found that during the relevant qualifying periods for the first through the fifth quarters, the claimant had an ability to work and that he did not return to employment relatively equal to his ability to work during those qualifying periods. Consequently, the claimant did not meet the requirements of Rule 130.102(d)(1). The hearing officer found that the claimant did not make a good faith effort to obtain employment commensurate with his ability to work during the relevant qualifying periods. The hearing officer also determined that the claimant's underemployment during the relevant qualifying periods was not a direct result of his impairment from the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. The claimant had the burden to prove his entitlement to SIBs for the quarters in issue. Given the lack of medical evidence addressing the claimant's condition or restrictions, if any, due to his compensable injury during the relevant qualifying periods, we cannot conclude that the hearing officer's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Robert W. Potts
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge